

# SENATE RECORD VOTE ANALYSIS

106th Congress  
2nd Session

Vote No. 160

June 29, 2000, 9:45 a.m.  
Page S-6047 Temp. Record

## SECTION 527 DISCLOSURES/Final Passage

**SUBJECT:** A bill to amend the Internal Revenue Code of 1986 to require section 527 organizations to disclose their political activities . . . H.R. 4762. Passage.

**ACTION: BILL PASSED, 92-6**

**SYNOPSIS:** As introduced and passed, H.R. 4762, a bill to amend the Internal Revenue Code of 1986 to require section 527 organizations to disclose their political activities, will require each section 527 organization to disclose certain identifying information about itself, to disclose the names of contributors who give it \$200 or more in a year, and to disclose the names of entities and individuals to whom it pays \$500 or more in a year. Details are provided below.

- A section 527 organization will be required to disclose the following information: its name; its address; its electronic mailing address; its purpose; the names and addresses of its officers, board members, highly compensated employees, contact person, and custodian of records; the names, addresses, and nature of relationships of any related entities; and any other information which may be required under the internal revenue laws. The name of each section 527 organization, its address, its electronic mailing address, its contact person's name, and its custodian of records' name will be made available at Internal Revenue Service (IRS) offices and on the Internet.

- Each section 527 organization will be required to submit reports that disclose the name and address of each entity and, in the case of an individual, the occupation and name of employer of that individual, who contributes more than \$200 to it in the aggregate in a calendar year, and to disclose the amount contributed. Such reports will also disclose the name and address of each entity and, in the case of an individual, the occupation and name of employer of that individual, to whom it pays more than \$500 in the aggregate in a calendar year, and to disclose the amount paid.

- In non-election years, either monthly or annual reports will have to be filed. In a calendar year in which a regularly scheduled election is held, quarterly reports, pre-election reports, and post-general election reports will be required. A pre-election report will be filed no later than the twelfth day before (or posted by registered or certified mail the fifteenth day before) any election with respect to which the organization "makes a contribution or expenditure," and will be complete as of the twentieth day before the

(See other side)

YEAS (92)				NAYS (6)		NOT VOTING (2)	
Republicans (48 or 89%)		Democrats (44 or 100%)		Republicans (6 or 11%)	Democrats (0 or 0%)	Republicans (1)	Democrats (1)
Abraham	Hatch	Akaka	Kennedy	Coverdell		Gregg <sup>2</sup>	Inouye <sup>2</sup>
Allard	Hutchinson	Baucus	Kerrey	Helms			
Ashcroft	Hutchison	Bayh	Kerry	Inhofe			
Bennett	Jeffords	Biden	Kohl	Mack			
Bond	Kyl	Bingaman	Landrieu	McConnell			
Brownback	Lott	Boxer	Lautenberg	Nickles			
Bunning	Lugar	Breaux	Leahy				
Burns	McCain	Bryan	Levin				
Campbell	Murkowski	Byrd	Lieberman				
Chafee	Roberts	Cleland	Lincoln				
Cochran	Roth	Conrad	Mikulski				
Collins	Santorum	Daschle	Moynihan				
Craig	Sessions	Dodd	Murray				
Crapo	Shelby	Dorgan	Reed				
DeWine	Smith, Bob	Durbin	Reid				
Domenici	Smith, Gordon	Edwards	Robb				
Enzi	Snowe	Feingold	Rockefeller				
Fitzgerald	Specter	Feinstein	Sarbanes				
Frist	Stevens	Graham	Schumer				
Gorton	Thomas	Harkin	Torricelli				
Gramm	Thompson	Hollings	Wellstone				
Grams	Thurmond	Johnson	Wyden				
Grassley	Voinovich						
Hagel	Warner						

### EXPLANATION OF ABSENCE:

1—Official Business  
2—Necessarily Absent  
3—Illness  
4—Other

### SYMBOLS:

AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

election. Section 527 reports on contributors and expenditures will be made public.

**Those favoring** passage contended:

This bill will close a huge new loophole in our campaign finance laws that is being abused by groups across the political spectrum. That loophole is allowing money to be raised and spent anonymously for or against candidates. We do not believe that people should be allowed to try to influence political campaigns anonymously. When the voters see attack ads savaging the character or record of a candidate, they have a right to know who is behind those ads. This bill will require such disclosure. It will not silence anyone; it will just give the American people information.

Section 527 organizations are relatively new entrants in the world of political soft money, and they are growing swiftly. They are completely unregulated as long as they do not use express words of advocacy in political campaigns. Billionaires can donate millions to wage anonymous, personal wars against candidates; even foreign governments like China can legally give anonymous 527 contributions. This problem barely existed a few years ago but it is now huge. If we do not get rid of it now we can guarantee that scandals will soon emerge.

Section 527 was created to make political organizations, such as party committees, tax-exempt. The IRS defines political organizations as organizations that are created primarily for 'influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State or local public office . . .' The Federal Election Campaign Act defines political committees, which are regulated by the Federal Election Commission (FEC), as organizations that spend or receive money 'for the purpose of influencing any election for Federal office.' These definitions are very similar, and for many years people assumed that section 527 organizations were synonymous with political committees, which report all of their contributions to the FEC.

Recently, though, groups that are not connected to particular political parties or to political action committees (PACs) have begun forming under Section 527. They admit that their purpose is purely political--to attempt to influence elections--but they deny that the FEC has any right to know where they get their money or how they spend it because they do not use "express words of advocacy" in urging the election or defeat of particular candidates. Instead, they engage in "issue advocacy" by expressing opinions on various issues and candidates. The Supreme Court has ruled that contributions for express advocacy may be regulated but contributions for issue advocacy may not.

This bill will solve this problem in a very straight-forward manner--it would make the extension of tax-exempt status for section 527 organizations contingent upon the disclosure of contributions of \$200 or more and of expenditures of \$500 or more. Any group that wanted to engage in issue advocacy anonymously could still do so, but not as a tax-exempt section 527 organization. The courts may think that issue advocacy is always beyond regulation constitutionally, but that does not mean that the taxpayers should have to subsidize it, especially when it has an obvious, and even admitted, political purpose.

Some Senators believe that we should have expanded the scope of this bill to include other tax-exempt organizations, such as unions and business organizations, that engage in similar unreported political activities under different sections of the Tax Code. Frankly, many of us favor such disclosure, but we chose not to ask for it on this bill for fear of making it more controversial and thus more difficult to pass. We also note that disclosure is not as necessary, because the political views of unions and business groups that engage in election activities are generally known. Also, requiring such disclosure would raise new constitutional questions, because those groups' political activities are often peripheral to other activities in which they engage.

Section 527s are a relatively new, but rapidly growing, problem. They are not yet an entrenched part of our diseased campaign finance system, so we think it will be much easier to win support for disclosure of their activities. We urge our colleagues to join us in nipping this problem in the bud.

**While favoring** passage, some Senators expressed the following reservations:

We are concerned that this legislation has flown through both Houses without Committee hearings. Very complex constitutional questions are raised by this issue. If we had held hearings, we could have heard testimony and carefully gone over the text of this bill to ensure that it did not contain any easily fixed constitutional errors. We hope we have not made any mistakes by rushing matters. Additionally, we are concerned with the narrow scope of this bill; we are just touching the tiny tip of the iceberg by looking at section 527s while ignoring the astronomically larger tax-exempt activities of unions and business organizations. We will support this bill as a beginning, but we think it could have been handled much better.

**Those opposing** passage contended:

Every Senator supports the disclosure of contributions and expenditures by groups that contribute to Federal candidates or that expressly advocate the election or defeat of Federal candidates. Most section 527 organizations engage in such activities and fully disclose them. A handful of section 527 organizations, though, do not engage in express advocacy--they engage in issue advocacy. They express political opinions on issues and candidates, and some of them exercise their constitutional right to express those

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opinions anonymously. This bill will likely be found to violate that constitutional right.

Case law demonstrates that there are serious questions as to whether the government can require public disclosure of donors to groups that do not engage in express advocacy. In fact, the Supreme Court has rejected such public disclosure as being a violation of the First Amendment in landmark cases like *Buckley v. Valeo*, 424 U.S. 1, 80 (1976) and *NAACP v. Alabama*, 357 U.S. 449, 462 (1958). Less than two weeks ago, yet another Federal court--the United States Court of Appeals for the Second Circuit--struck down an attempt to regulate groups that do not engage in express advocacy.

We agree that issue advocacy should be beyond regulation. People should have the right to express their opinions on issues without requiring them to report to the government if they do so. By participating in groups that advocate a particular viewpoint, citizens exercise their much cherished free speech rights. As a practical matter, to express a viewpoint to the public, money must often be spent, especially if it is to express a viewpoint that is not favored by the media, which otherwise might provide free coverage. Requiring groups that represented unpopular viewpoints, minority viewpoints, or views that were highly critical of government policies, to report on themselves to the public if they dared to speak up would greatly chill the right to political speech. Essentially, that policy would say go ahead and speak, but if you do, the Government, including the IRS, is going to keep tabs on who you are.

Interestingly, the only issue advocacy activities that our liberal colleagues ever seem to complain about are activities that say unpleasant things about them and nice things about their opponents. Liberals complain about section 527 organizations because most of the new such organizations that have formed have been hostile to Democrats. They do not complain about the tax-exempt political activities of unions or other groups that tend to favor them, though. Many Republicans who are supporting this bill tried to expand it to cover business and union groups as well, but were unsuccessful. We are left with a narrow bill because Democrats insisted on a narrow bill.

The emergence of 527 organizations that use issue ads was predictable for two reasons. First, we have a Democratic Administration that mysteriously gained access to highly confidential Federal Bureau of Investigation (FBI) files on Republican leaders which it legally did not have any right to possess, and, perhaps by monumental coincidence, people who have accused this Administration of illegal activities have frequently found themselves audited by the IRS shortly thereafter. Maybe the Clinton/Gore Administration has not corruptly used the Government to attack its critics, but the appearance that it has is certainly there, so people who donate money to oppose its policies have good reason to want to donate that money anonymously. The second, continuing reason is that efforts by liberals to restrict campaign speech they find offensive has made it more difficult for contributors to give money to candidates, which has forced them to look for other ways to be heard. If our liberal colleagues were not always trying to suppress political speech, it is unlikely that 527 organizations would ever have been used for issue ads.

We do not think that this bill will have a large effect. Personally, we think it is unconstitutional and will vote against it on that basis, but we expect it to pass by a large margin. The general principle of requiring greater disclosure is correct, but what we really need is fewer restrictions on express advocacy groups and on campaigns and more disclosure of their activities. We oppose final passage.